

REMARKS

Claims 17-19, 21, 22 and 29-31 are pending. Claims 17-19, 21 and 22 stand withdrawn. Applicants request that upon allowance of claim 29 that claims 17-19, 21 and 22, be recombined with examined claims 29-31, and newly added claims 32-34. Claims 29-31 are currently amended. New claims 32-34 have been added to capture limitations previously recited in claim 29, and disclosed in the specification, e.g., multiple / plural receiving members. *See, inter alia*, substitute specification page 12, lines 25-26; page 14, lines 20-23, and the original figures. No new matter has been added. Entry and reconsideration of the above Amendment and remarks herein are requested.

The Office action objects to claim 29 because of a typographical error at line 26, and the absence of the term "bone" in the claim preamble. In view of the above Amendment, these objections should be moot.

Claims 29-31 have been rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent 4,988,350 (Herzberg) in view of U.S. Patent 5,006,120 (Carter). Applicants traverse this rejection and will direct their arguments to the currently amended claims.

Claim 29 has been rewritten, and a clean copy of the claim is provided below:

29. An implant plate for stabilizing a fracture, comprising:

a plate member having an edge defining a head-end portion shaped to bear against a surface of a bone and a shaft-end portion shaped to bear against a surface of a bone, the shaft-end portion being narrower along a lateral direction than the head-end portion, and the plate member having a bone facing surface to bear against the bone and an opposing side surface facing away from the bone;

a plurality of holes for bone screws on each of the head-end portion and the shaft-end portion for fixing the plate member to the bone surfaces; and

at least one receiving member protruding from the side surface, located at the head-end portion and proximate to the edge, each member defining a substantially circular and circumferentially enclosed aperture through which flexible members may be passed through and tightened after the plate number has been secured to the bone surfaces.

As amended, claim 29 more clearly defines the configuration of the “at least one receiving member,” and its location.

The Office Action states “Herzberg discloses an implant plate (Fig. 17, 20) for stabilizing a fracture having a plate member (20) with [] at least one receiving member (129) for receiving flexible cerclage wires (see Col. 9, lines 55-60).” The Office Action further opines and alleges “these receiving members face away from bone (as shown in the side profile in Fig. 18) and is considered hook-like and also is substantially circular.” However, the Herzberg patent does not teach, suggest or illustrate “a substantially circular and circumferentially enclosed aperture” of the receiving member. The Office Action relies on the diagrammatic rear view of Figures 17, instead of the side view shown in Figure 18 for this alleged teaching; sections of each Figure are replicated below:

Fig.17

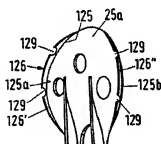
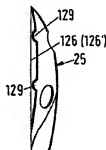
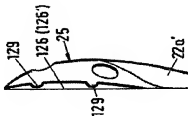


Fig.18



Rotating Figure 18 provides a more realistic view of the cutouts 129:



Herzberg discloses "In order to fix a cerclage wire not shown in the drawing, the bent-over section 126 or its individual sections 126', 126'' are provided with a number of slot-shaped cutouts 129" (Column 9, lines 57-60). No other description of the cutouts appears to be provided. At best, the "slot shaped" cutouts 129 of Herzberg may be described as arcuate, and appear to have the maximum amount of openness for an aperture, i.e., a openness dimension spanning the maximum or entire dimension of the cutout, in contrast to the claimed "circumferentially enclosed aperture."

The Office Action further opines and alleges Herzberg teaches "these receiving members face away from bone (as shown in the side profile in Fig. 18)." However, the statements in the Office Action regarding Herzberg's positioning of the cutouts 129 are moot because Herzberg remains deficient in its failure to teach, suggest or disclose the claimed receiving members..

The Office Action also asserts that Herzberg discloses the claimed invention except for the limitations to implant steel or titanium, the bent plate, or a plate having a uniform thickness that ranges from 0.5 mm to 6.5 mm or from 0.8-3.5 mm, features now recited in the dependent claims, and alleged deficiencies remedied by the Carter patent. However, notwithstanding any teaching that Carter may provide regarding a fracture fixation plate, Carter does not remedy the flaw / deficiency in the Herzberg patent, i.e. Herzberg remains deficient in its failure to teach, suggest or disclose the claimed receiving members.

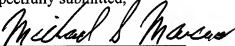
Accordingly, the rejection of record is improper and should be withdrawn. In view of the above amendment, Applicants submit the pending application is in condition for allowance.

An extension of time for two months, extending the period for response from March 8, 2009, until May 8, 2009, is concurrently filed herewith.

The Director is hereby authorized to charge any deficiency in the fees filed, asserted to be filed or which should have been filed herewith (or with any paper hereafter filed in this application by this firm) to our Deposit Account No. 04-1073, under Order No. A8130.0659/P659.

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Respectfully submitted,

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